IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5994 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

H P MEHTA

Versus

GUJARAT SLUM CLEARNACE BOARD

Appearance:

MR AY KOGJE for MR SV RAJU for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/04/2000

ORAL JUDGEMENT

#. By this petition under Article 226 of the Constitution of India, the petitioner, Deputy Executive Engineer, Gujarat Slum Clearance Board, Ahmedabad, challenges the order, Annexure-E, dated 20th August, 1988 of the Board under which he was ordered to be reverted from the post of Executive Engineer to the post of Deputy

Executive Engineer.

#. The learned counsel for the petitioner contended that in the promotion order, it was not the condition for the petitioner to pass examination for Deputy Executive Engineer. Second contention has been raised that in the impugned order it is mentioned that the petitioner is irregular in service but what were irregularities in service have not been disclosed nor for this the petitioner was given notice or opportunity of hearing. So far as third ground is concerned, the learned counsel for the petitioner submitted that this is wholly perverse ground. In case the health of the petitioner as what it is alleged is hampering the work, then he would not have been fit in service whereas he was found suitable for continuing as Deputy Executive Engineer in the Project Section. Lastly, it is contended that the petitioner vide representation dated 5th March 1988 made a request to the Board to grant him exemption from appearing in the D.E.E. for the reasons and grounds given therein.

#. Despite of service of notice of Rule, the Board has not cared to put appearance. The averments made by petitioner in the special civil application stand uncontroverted and the same are to be taken to be correct.

#. From the Specail civil application, I find that the representation made by petitioner on 5.3.88 has not been decided by respondent-Board. Whether exemption from appearing in D.E.E. examination is granted or not is a different matter but once for the reasons given therein the petitioner prayed for grant of exemption, this representation has to be decided. That has not been done. So far as two other grounds are concerned on which the reversion order of the petitioner is ordered, it is suffice to say that in case the petitioner is not regular in service, then it is a serious matter for which he should have been given notice and opportunity of hearing. Similar is the case for the ground given for his ill health and for which nothing has been said in the order nor any material has been produced on record.

#. In the result, the special civil application is disposed of in the terms that the matter be considered afresh and after giving notice to the petitioner in which the Board has to give out details of his irregularity in services as well as ill health. The Board has to also decide the application filed by petitioner for grant of exemption from appearing in the D.E.E. examination. The petitioner is free to file a detailed reply to this

notice of the Board and if he so desires, the Board, before deciding the matter may also afford him opportunity of personal hearing. In case still if the Board considers it to be a case to continue with the reversion order of the petitioner, a reasoned order be passed and a copy of the same be sent to the petitioner. This exercise has to be undertaken and completed within a period of two months from the date of receipt of writ of this order. Where it is found that the reversion of the petitioner from the post of Executive Engineer to the post of Deputy Executive Engineer is not correct, the petitioner shall be entitled for all the consequential benefits. Rule and special civil application stand disposed of in the terms aforesaid with liberty to the petitioner for revival of the same in case of difficulty. No order as to costs.

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(sunil)